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ABSTRACT

These two brief papers provide guidelines for consumers, parents, and advocates in the techniques of negotiation and whistleblowing ("speaking out against illegal, immoral, and otherwise wrong practices in human services, government, and other organizational settings"). Steps for preparing to negotiate with opposing groups involve proper timing of negotiation, obtaining backing of consumer groups, negotiating only with persons who have authority to make decisions, holding press conferences if the agency refuses to negotiate, and preparing strategies for negotiation. These strategies include controlling the session, presenting a united front with one spokeperson, understanding how people resist change, making a record of the meeting, and knowing what is or is not acceptable. The checklist for whistleblowers includes identifying issues carefully, reporting the problem to the immediate supervisor, speaking knowledgeably about the costs of inaction, identifying laws and regulations, developing private and public support, warning your family and friends that you may become the object of slander, knowing how much you are willing to compromise, and keeping a record of whistleblowing activities. Although intended for advocates of the disabled, the approaches are applicable for all negotiating and whistleblowing events. (Author/KC)

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NEGOTIATION: A TOOL FOR CHANGE

by

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1979

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NEGOTIATION: A TOOL FOR CHANGE

Any time two groups with conflicting interests meet to discuss the issues between them, they are negotiating. Sometimes the negotiations are explicit; that is, the groups consciously draw on negotiation strategies. Usually they are not. Too often, those who advocate for change enter into negotiations with only a vague sense of what they hope to accomplish and how to accomplish it. This paper is designed to enable consumers, parents, and advocates to negotiate effectively.

Short term--Long term

You can use negotiations to work for either short term or long term change. Short term change usually means helping one or a small number of people without radically altering the conditions that create the problems. Some examples of short term, limited change are gaining access to previously undisclosed information or records; obtaining entry to an institution; advocating for special ramps, toilet facilities, or prosthetic devices for a small group of persons with physical disabilities; or working for the establishment of a community residence for a small number of people. Each of these short term changes represents a challenge to the usual policies and practices of many service systems, but they do not represent broad sweeping reforms.

Long term change involves confronting systemic problems. Architectural barriers, institutional abuse, segregation--all are symptomatic of underlying problems in societal attitudes and human services. In advocating for long term change, negotiations should be used together with a larger set of strategies mapped out beforehand. For instance, negotiating may be used along with media coverage, investigations, public forums, letter writing campaigns, and litigation (see Biklen, 1974 for a full discussion of these forms of action).

Approaches

Your approach should be determined by the intransigence, or willingness to change, of the opposing side. As Des Jardins (1971) notes, "If a bureaucrat gives

you what you are entitled to, he is your friend. If he doesn't, he is your enemy."

You will sometimes need to take a "hard line" approach. When the opposing side actively resists change, you will have to be confrontative. Often a conciliatory approach will be most effective. For instance, when the opposition demonstrates willingness to change through its actions, you can afford to adopt a softer approach. But do not abandon your goals for the sake of getting along with bureaucrats and officials. As Saul Alinsky (1972) noted, "Reconciliation means when one side gets the power and the other side gets reconciled to it, then we have reconciliation."

Preparation

1. Know when to negotiate. Negotiations should be held prior to more dramatic or public actions, such as press conferences, demonstrations, or litigation, in order to provide agencies with an opportunity to meet your demands before you "go public." You should enter into negotiations when informal approaches fail; for example, when a parent's requests for services are denied.
2. Obtain the backing of a consumer group or a coalition of groups. Make sure you identify yourself with consumer interests.
3. Setting up the negotiation. Request a meeting in writing. Your letter should establish your own credibility, explain the general purpose of the meeting, and specify which agency representatives should attend. Don't give too much information on your position beforehand. Save your demands and documentation for the negotiation session. Follow up the letter with a phone call to confirm the arrangements for the meeting. Be sure to find out which agency representatives will attend.
4. Target. You should only negotiate with persons who have the authority to make decisions. In most negotiations, you will want to meet with the head of the agency.
5. What if they refuse to meet? First, appeal to their superiors; for example, state officials when local agency representatives balk at meeting. Second, go public: hold a press conference; organize a sit-in or demonstration.

6. Form a negotiating team. Any negotiating team should include at least one consumer, a person well-versed in the law, and an "expert" in substantive issues (someone who can respond to clinical or professional issues).

7. Prepare for the negotiation:

* Map out a set of strategies. What will you do if the negotiations do not meet with immediate success?
* Hold planning sessions. Identify the issues, formulate your demands and fall-back positions, collect the facts, anticipate the opposition's responses.
* Role-play the negotiation session.

Strategies for Effective Negotiation

1. Control the negotiation session. You should define the issues and set the tone of the session.

* Set the agenda. You might even come with a written list of agenda items.
* Choose your seating carefully. Don't let an agency official hide behind a desk or sit at the head of a table. This gives control over the meeting.
* Refer to them as they refer to you. Titles carry authority. Don't let them call you by your first name if they refer to themselves by their titles (i.e., Mrs., Ms., Dr.).
* Bring your documents, such as letters, to the session.
* Chair the meeting. Review the circumstances or case leading to the meeting, the law, and other facts.
* Present your demands or positions clearly.

2. Numbers. Never negotiate when you are out-numbered. Leave if they try to overwhelm you with sheer numbers of people.

3. Select a spokesperson. While all members of the negotiating team should participate in the session, there should only be one person able to make compromises.

4. Present a united front. Make sure that members of the team do not contradict each other. The opposition will use dissensus to resist change.

5. Know and cite the facts. Pay attention to officials' defenses or responses. Challenge them on the facts. Ask for specifics.

* Know the agency and its services (budget, types of programs, etc.).
* Know the law and legal precedents.
* Be familiar with model programs elsewhere.
* Know their philosophy. Point to discrepancies between philosophy and actual practices. Hold them to what they say.

6. Know how people resist change (see also Biklen, 1974). Anticipate "cool outs" and have your responses ready. Here are some of the more common "cool outs" used to resist change:

* Double talk. "I agree with your philosophy, but. . ." (Challenge them to act on their beliefs.)
* Passing the buck. "I agree with you, but I'm not in a position to make that decision." (Passing the buck is an age old tactic used to maintain the status quo. Force them to accept responsibility.)
* The money game. "We'd like to do what you ask, but we just don't have the money." (There usually is enough money; it's a matter of priorities. Further, a lack of money does not excuse violations of people's rights.)
* Expert knows best. "Most psychiatrists say that . . ." or "According to research. . ." (The fact of the matter is that research on these kinds of complex problems has failed to provide conclusive answers.)
* Cover up. "We have one of the best programs in the country." (Know the facts about programs elsewhere.)
* Blaming the victim. "These people are too retarded to live in the community." (Confront them on their backward attitudes. Don't let them blame the client for the system's failures.)
* Turning the tables. "You're too emotional," or "You just have to be patient." (Don't feel guilty about working for change. Why not feel emotional and impatient about people's rights?)

7. Be assertive, but don't attack people personally. Distinctions between "good" and "bad" or "friendly" and "unfriendly" officials or professionals are useless in a negotiating session. What is important is whether they yield to your demands. Don't be afraid to challenge "nice" people. Don't hesitate to be conciliatory with "unfriendly" bureaucrats who are forced to accept your position.

8. Avoid being put on the defensive. Don't beg; services should be available as a matter of right, not charity. Don't feel guilty; you are only asking for that to which people are entitled. Refuse to discuss your own past actions and other irrelevant issues (e.g., "That's not the issue. . .").

9. Use anger strategically. Don't express anger simply to vent your frustrations. Show anger to make a point or to break a deadlock.

10. Create a record. Take a tape recorder to the meeting so that you have a record of the proceedings. If you don't have a tape recorder or if this is too threatening to the officials, one of the members of <u>your</u> group should act as a notetaker. Don't hesitate to ask a bureaucrat to repeat something "for the record." This will put them on notice that you mean serious business.

11. Latch on to any concessions. Refer to any concession, however tentative, as a firm agreement on their part. Don't let them back off. Chances are the opposition is not as organized as you are. Its members may not agree with each other. Treat the most conciliatory member as the spokesperson and his or her statements as binding.

12. Establish firm timetables and standards of performance. Don't accept vague promises and empty statements. Ask them to be specific and to set firm deadlines.

13. Don't agree to do their work for them. Don't write their policy statements; if they aren't committed enough to write them, they aren't committed enough to implement them. Don't agree to establish programs; that's their job.

14. Know what you will and will not accept.

* Prior to entering the negotiations, set maximum and minimum goals where the

minimum is the very least with which you would be satisfied. Never compromise on the minimum.

* Make high demands and few concessions (Manus, n. d.).
* Never settle for less than 100% of your demands. But don't turn down less. Just don't settle for it. Keep the pressure up until you get the full 100% (Des Jardins, 1971).
* Never compromise without any thought of future consequences (Manus, n. d.).
* If you are not sure whether or not a proposed compromise is satisfactory, don't be forced into a premature agreement. Tell them you need time to think about it.

15. What if the negotiation session deadlocks?

* Let them know you don't think you're getting anywhere.
* Walk out. A carefully orchestrated "walk out" may break the deadlock and force concessions.
* Threats. Don't hesitate to threaten other action, such as media coverage or litigation. "The threat is usually more terrifying than the thing itself (Alinsky, 1972)." Subtle threats are probably most effective since they allow an official to "save face"; for example, "Look, the press is really interested in these kinds of issues," or "We don't want to have to go to court to resolve this issue."

Follow-Up

1. Write a letter to the agency summarizing the major points discussed during the negotiating session. The letter should highlight major agreements reached during the session, agreed upon timetables and standards for performance, and, if the session was unsuccessful, disagreements and glaring examples of agency unresponsiveness. Carbon copies of the letter should be sent to agency "higher-ups" as well as your own allies, whether consumer groups or attorneys. The letter should clearly state that if the official's recollection of the meeting differs from your record

(based on carefully recorded notes or a tape recording), he or she should write you immediately. A certified letter carries an official and formal aura.

2. Successful negotiations. If you win your objectives through negotiation, hold a press conference and send out an "action bulletin" to your constituency announcing a "major policy breakthrough." Your negotiations can serve as a precedent for other groups.

3. Further negotiations. Continue to negotiate only as long as you are making significant progress. Don't waste your time by negotiating with intransigent officials. When negotiations seem to drag on and on, with no end in sight, tell the officials that you want a firm decision within a specific time period.

4. Buck-passing. It is sometimes effective to negotiate around an issue with representatives of more than one agency. When you find officials continuing to engage in passing the buck, call a meeting among all of the buck-passers to locate responsibility for providing services.

5. Unsuccessful negotiations. Long-term change is seldom accomplished through negotiations alone. Do not be discouraged if negotiations do not result in immediate systemic victories. By increasing your understanding of the system and creating a record of attempts to resolve issues on a face-to-face basis, negotiating paves the way for other strategies: press coverage, lobbying, appeals to other authorities, litigation, public forums, and others.

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Also Available

"Negotiation: A tool for change." A video-tape on effective negotiation. DD Rights Center, Center on Human Policy, 216 Ostrom Ave., Syracuse, NY 13210.

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PRINCIPLES OF WHISTLEBLOWING

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*Speaking out about and organizing against illegal, immoral, and otherwise wrong practices in human services, business, government and other organizational settings.

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John Matson had been a staff worker at the Metropolitan Developmental Center for seven years. In that time, he made few waves. But on January 23, 1979, he spoke out. After months of repeatedly trying to get the institution director to call a halt to the practice of isolating a severely disabled man in a barren shower room, he went public. He called a public interest attorney. He became a whistleblower.

Like many other whistleblowers, John Matson acted with a quiet determined conviction that he was right. He was not surprised when other staff stopped talking to him, when his wife, also a staff worker, became the object of several negative reports, and when he was charged by his co-workers with grandstanding. He expected these things.

Such is the life of whistleblower. It is a role for people who are willing to take risks in their lives.

From John Matson and other whistleblowers, we have collected principles for this kind of advocacy. These principles are shared below:

Checklist for Whistleblowers

1) Identify your issues carefully. Prioritize them.
2) Document the problem thoroughly. Double check your information. Gather statistics, memoranda or other data to support your position. Make sure you are right. When considering the problem and it's solution - ask yourself - who is creating the problem? - and is this person or group vulnerable? - what is his/her "achilles heel?"
3) Report the problem to your immediate supervisor.
4) Re-contact the supervisor if there is no action. Keep a record of this.
5) If there is no action or only token action taken, consider the implications of whistleblowing in this situation.
6. Identify who will suffer if the problem goes unchanged. How much suffering will occur. Be able to speak knowledgeably about the costs of inaction.

Who benefits from continuation of the problem? Is someone's prestige or economic welfare being fed by the continuation of the problem?

7) Know and be able to refer to the ethical standards of your professional association.

8) Identify the laws and regulations which relate to the problem at hand. Identify organizational mandates, official policies, statements of mission and philosophy which support correcting the problem.

9) Identify an internal sounding board, counselor with whom you can share your concerns, and from whom you can receive good advice. Be sure to select a person you can trust.

10) Identify informants within the hierarchy of the organization who can keep you informed of what is happening in the chief administrative offices, and in other key locations of the organization. Identify where the formal and informal power is within the organization.

11) Develop private and public support, allies (e.g., lawyers, professional experts, associations, consumers, citizens). School yourself on advocacy agencies and consumer groups in your community. Find out which groups have a reputation for sustained action.

12) Show the right decorum. You will certainly offend others by the substance of your complaints. There, one should not offend by style (swearing, wearing bizarre clothes, attitude of arrogance, etc.).

13) Warn your family and closest friends that you may become the object of slander (rumors may start about your religious or political beliefs, about your sex life, about your mental health, your professional competence, etc.).

14) Examine your needs. Ask yourself if you are willing to go through perhaps a good deal of suffering because your cause is right and just. Understand

that you may not win. Anticipate your own suffering. Project yourself into the future. What will you do when you are rejected? Will you need personal and other forms of support? How and where will you get the needed support? Also understand that some change occuring as a result of the efforts of a whistleblower is never associated with the person who originally blew the whistle. Someone else who took little or no risk may get the credit when you took all the risk. Ask yourself whether you have the stamina for blowing the whistle. Do you have the energy to see the effort to completion?

15) Develop an action plan

16) Optional: alert the organization that you are going public. Allow enough time for the organization to remedy the situation before making your move.

17) Blow the whistle. Go public. Focus on the issues and not on the personalities involved. Keep the issues limited in number. Do not go public on more than one issue when the issues are not mutually supportive of one another. Select issues which are compatable with contemporary cultural norms. In other words, do not select issues for whistleblowing that the society at large has not yet accepted as valuable.

18) Go public as a group if possible. Have a plan to keep the issue alive in the eyes of the public. Often, a single news conference will not cause sufficient momentum to keep the issue alive in the community.

19) Be prepared to propose an answer to the problems you have exposed.

20) Know how much you are willing to compromise.

21) Be a hard worker; keep evidence of your own competence. Do your job thoroughly. Make sure you cannot be criticized for being incompetent in your job. This point is critically important and a pre-requisite to any whistleblowing if you are to have credibility.

22) Whenever possible, strive to win. Whenever possible, choose winnable issues.

23) Keep a record of your whistleblowing activities. Learn from your own experiences. Share your experiences. Have access to a competent attorney in the community who will offer you advise about protecting your legal rights relative to your employment.

24) Enlist others to whistleblowing. Establish dialogue and on-going communication with others who have the moral conviction essential to whistleblowing. Establish on-going relationships with people who blow the whistle responsibly, consistent with the points outlined in this checklist. Teach effective whistleblowing strategies to others.